IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 34404 of 2005(U)

AGAINST THE ORDER IN CMA 73 /2004 IN CMA.72/2004 OF PRINCIPAL DISTRICT COURT, THALASSERY OS.108/2004 OF MUNSIFF COURT, KUTHUPARAMBA

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PETITIONER:

A.SIVADASAN, S/O.RAMAN, AGED 51 YEARS, BUSINESS, RESIDING AT "THAYYIL HOUSE", PAZHASSI AMSOM, MATTANNUR DESOM, MATTANNUR.P.O, THALASSERY TALUK, KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS:

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1. P.P.DILEEP KUMAR, S/O.ACHUTHAN, AGED 36 YEARS, PROPRIETOR, HOTEL VRINDA, P.O.MATTANNUR, THALASSERY TALUK, KANNUR DISTRICT.

2. KERALA WATER AUTHORITY, REPRESENTED BY THE ASSISTANT EXECUTIVE ENGINEER, KERALA WATER AUTHORITY, MATTANNUR, KANNUR DISTRICT.

R2 BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL
SRI.JOY GEORGE,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 34404/2005 U

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAINT IN OS NO. 108/2004 ON THEFILE OF THE MUNSIFF COURT, KUTHUPARAMBA.

EXT.P2. COPY OF THE INJUNCTION ORDER BY THE MUNSIFF COURT, KUTHUPARAMBA IN IA NO. 866/2004 IN OS NO. 108/2004.

EXT.P3. COPY OF THE COMMISSIONER'S REPORT AND PLAN DT. 2/4/04.

EXT.P4. COPY OF THE COMMISSION REPORT DT. 16/6/2004.

EX.T.P5. COPY OF THE ORDER IN IA NO. 866/2004 IN OS NO. 108/2004 DT. 18/6/04.

EXT.P6. COPY OF THE AFFIDAVIT IN IA NO. 847/2004 IN CMA NO. 72/2004 ON THE FILE OF THE DIST. COURT, THALASSERY.

EXT.P7. COPY OF THE COUNTER IN TA NO. 847/2004 IN CMA NO. 72/2004 ON THE FILE OF THE DIST. COURT, THALASSERY.

EXT.P8. COPY OF THE ORDER DT. 27/09/2005, IN IA NO. 847/2004 IN CMA NO. 72/2004 ON THE FILE OF THE DIST. COURT, THALASSERY.

True copy

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PIUS C. KURIAKOSE, J.

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W.P.(C)No.34404 OF 2005

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DATED THIS THE 5th JULY, 2007

J U D G M E N T

Impugned in this Writ Petition under Article 227 of the Constitution is Ext.P8 order passed by the lower appellate court on an application for issuance of commission submitted by the 1st respondent-appellant in C.M.A.No.72 of 2004. The C.M.Appeal was directed against Ext.P5 order of injunction passed by the Munsiff's Court in favour of the petitioner. I am told that another C.M.Appeal has been filed by the Kerala Water Authority, the 2nd respondent herein (2nd defendant in the suit) also. Ext.P6 is the commission application submitted by the 1st respondent. To Ext.P6, the writ petitioner filed Ext.P7 objections in which certain serious contentions are seen raised. The impugned order is a totally non-speaking order in the sense that absolutely no reasons are given by the learned District Judge for justifying his decision. Needless to say that the contentions raised in Ext.P7 are not even adverted to.

2. This Court while admitting this Writ Petition granted stay of Ext.P8 and the same is continuing even now. This being the position, I am of the view that it will suffice if the learned District Judge is directed to dispose of C.M.A.Nos.72 of 2004 and 73 of 2004 on their

merits after hearing both sides. It is open to the respondents to urge before the District Court that for resolving the controversy in the suit, a report on the various aspects mentioned in the present commission application (I.A.No.847 of 2004) is absolutely necessary. If the appellate court is convinced regarding the merits of the request of the respondents, that court can, while disposing of the appeals, issue appropriate directions regarding issuance of fresh commission by the trial court itself. The learned District Judge will take decision in both the appeals as indicated above at the earliest and at any rate within two months of receiving copy of this judgment.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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